

PUBLIC WATERS ACCESS ACT

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dixon M. Pitcher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to access to public waters.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals provisions of Title 73, Chapter 29, Public Waters Access Act;
- ▶ allows members of the public to use certain public waters;
- ▶ restricts a member of the public from entering, crossing, or using certain private property while using certain public waters except under some circumstances;
- ▶ allows a property owner to place a fence or similar barrier across certain public water under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-1, as last amended by Laws of Utah 2010, Chapter 410

73-10-1, as last amended by Laws of Utah 2007, Chapter 329



28 73-29-102, as enacted by Laws of Utah 2010, Chapter 410

29 REPEALS AND REENACTS:

30 73-29-201, as enacted by Laws of Utah 2010, Chapter 410

31 73-29-202, as last amended by Laws of Utah 2011, Chapter 340

32 73-29-203, as enacted by Laws of Utah 2010, Chapter 410

33 73-29-204, as enacted by Laws of Utah 2010, Chapter 410

34 73-29-205, as enacted by Laws of Utah 2010, Chapter 410

35 REPEALS:

36 73-29-103, as enacted by Laws of Utah 2010, Chapter 410

37 73-29-206, as enacted by Laws of Utah 2010, Chapter 410

38 73-29-207, as enacted by Laws of Utah 2010, Chapter 410

39 73-29-208, as enacted by Laws of Utah 2010, Chapter 410



41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section 73-1-1 is amended to read:

43 **73-1-1. Waters declared property of public.**

44 (1) All waters in this state, whether above or under the ground, are [~~hereby declared to~~
45 ~~be~~] the property of the public, subject to all existing rights to the use thereof.

46 [~~(2) The declaration of public ownership of water in Subsection (1) does not create or~~
47 ~~recognize an easement for public recreational use on private property.~~]

48 [~~(3) The Legislature shall govern the use of public water for beneficial purposes, as~~
49 ~~limited by constitutional protections for private property.~~]

50 [(4)] (2) The right of the public to use public water [~~for recreational purposes~~] is
51 governed by Chapter 29, Public Waters Access Act.

52 Section 2. Section 73-10-1 is amended to read:

53 **73-10-1. State's policy -- Creation of revolving fund -- General construction of**
54 **act.**

55 (1) The Legislature of the state of Utah having [~~heretofore~~] declared by Section 73-1-1,
56 Utah Code Annotated 1953, that, "All waters [~~of~~] in this state, whether above or under the
57 ground, are [~~hereby declared to be~~] the property of the public, subject to all existing rights to
58 the use thereof"; and further, by Section 73-1-3, Utah Code Annotated 1953, that, "Beneficial

59 use shall be the basis, the measures and the limit of all rights to the use of water in this state";
60 and further, by Section 17B-2a-1002 that the policy of the state is, "To obtain from water in
61 Utah the highest duty for domestic uses and irrigation of lands in Utah within the terms of
62 interstate compacts or otherwise," now by this act reiterates and reaffirms such declaration of
63 the public policy of the state of Utah.

64 (2) It is further declared to be the policy of this chapter and of the state of Utah, and the
65 Legislature recognizes:

66 (a) that by construction of projects based upon sound engineering the waters within the
67 various counties of the state of Utah can be saved from waste and increased in efficiency of
68 beneficial use by 25% to 100%;

69 (b) that because of well-known conditions such as low prices and lack of market for
70 farm products, particularly the inefficiency of water supply because of lack of late season water
71 and consequent lack of financial strength, water users in small communities have been unable
72 to build projects that would provide full conservation and beneficial use for the limited water
73 supply in this semiarid land;

74 (c) that water, as the property of the public, should be so managed by the public that it
75 can be put to the highest use for public benefit;

76 (d) that Congress of the United States has provided for the building of larger water
77 conservation projects throughout the semiarid states, payment of the capital costs without
78 interest to be made by the water users upon the basis of a fair portion of crop returns;

79 (e) that the Congress of the United States has established in the department of interior
80 and in the department of agriculture, various agencies having authority to develop, protect, and
81 aid in putting to beneficial use the land and water resources of the United States and to
82 cooperate with state agencies having similar authority;

83 (f) that the interests of the state of Utah require that means be provided for close
84 cooperation between all state and federal agencies to the end that the underground waters and
85 waters of the small streams of the state, and the lands thereunder, can be made to yield
86 abundantly and increase the income and well-being of the citizens of the state;

87 (g) that it appears to be sound public policy for the state of Utah to provide a revolving
88 fund, to be increased at each legislative session, to the end that every mountain stream and
89 every water resource within the state can be made to render the highest beneficial service, such

90 fund to be so administered that no project will be built except upon expert engineering,
91 financial, and geological approval.

92 (3) All of the provisions of this chapter shall be liberally construed so as to carry out
93 and put into force and effect the purposes and policies as ~~[hereinabove set forth]~~ described in
94 this section.

95 Section 3. Section **73-29-102** is amended to read:

96 **73-29-102. Definitions.**

97 As used in this chapter:

98 [~~(1) "Division" means the Division of Wildlife Resources.~~]

99 [~~(2) "Floating access" means the right to access public water flowing over private
100 property for floating and fishing while floating upon the water.~~]

101 [~~(3)~~] (1) "Impounded wetlands" means a wetland or wetland pond that is formed or the
102 level of which is controlled by a dike, berm, or headgate that retains or manages the flow or
103 depth of water, including connecting channels.

104 [~~(4) "Navigable water" means a water course that in its natural state without the aid of
105 artificial means is useful for commerce and has a useful capacity as a public highway of
106 transportation.~~]

107 [~~(5)~~] (2) "Private property to which access is restricted" means privately owned real
108 property:

109 (a) that is cultivated land, as defined in Section 23-20-14;

110 (b) that is:

111 (i) properly posted, as defined in Section 23-20-14;

112 (ii) posted as described in Subsection 76-6-206(2)(b)(iii); or

113 (iii) posted as described in Subsection 76-6-206.3(2)(c);

114 (c) that is fenced or enclosed as described in:

115 (i) Subsection 76-6-206(2)(b)(ii); or

116 (ii) Subsection 76-6-206.3(2)(b); or

117 (d) that the owner or a person authorized to act on the owner's behalf has requested a
118 person to leave as provided by:

119 (i) Section 23-20-14;

120 (ii) Subsection 76-6-206(2)(b)(i); or

- 121 (iii) Subsection 76-6-206.3(2)(a).
- 122 [~~(6) "Public access area" means the limited part of privately owned property that:~~
- 123 [~~(a) lies beneath or within three feet of a public water or that is the most direct, least~~
- 124 ~~invasive, and closest means of portage around an obstruction in a public water; and]~~
- 125 [~~(b) is open to public recreational access under Section 73-29-203; and]~~
- 126 [~~(c) can be accessed from an adjoining public access area or public right-of-way.]~~
- 127 [~~(7) "Public recreational access" means the right to engage in recreational access~~
- 128 ~~established in accordance with Section 73-29-203;]~~
- 129 [~~(8)~~ (3) (a) "Public access water" means water:
- 130 (i) described in Section 73-1-1; [~~and]~~
- 131 (ii) flowing or collecting on the surface:
- 132 (A) within a natural or realigned channel; or
- 133 (B) in a natural lake, pond, or reservoir on a natural or realigned channel[~~;~~]; and
- 134 (iii) that, in its natural state during ordinary high water, is capable of:
- 135 (A) floating a commercial or floatable commodity; or
- 136 (B) being navigated by oar-, paddle-, or motor-propelled watercraft.
- 137 (b) "Public access water" does not include water flowing or collecting:
- 138 (i) on impounded wetland;
- 139 (ii) on a migratory bird production area, as defined in Section 23-28-102;
- 140 (iii) on private property in a manmade:
- 141 (A) irrigation canal;
- 142 (B) irrigation ditch; or
- 143 (C) impoundment or reservoir constructed outside of a natural or realigned channel; or
- 144 (iv) on a jurisdictional wetland described in 33 C.F.R. 328.3.
- 145 [~~(9)(a) "Recreational access" means to use a public water and to touch a public access~~
- 146 ~~area incidental to the use of the public water for:]~~
- 147 [~~(i) floating;~~]
- 148 [~~(ii) fishing; or]~~
- 149 [~~(iii) waterfowl hunting conducted:]~~
- 150 [~~(A) in compliance with applicable law or rule, including Sections 23-20-8, 73-29-203,~~
- 151 ~~and 76-10-508; and]~~

152 ~~[(B) so that the individual who engages in the waterfowl hunting shoots a firearm only~~
 153 ~~while within a public access area and no closer than 600 feet of any dwelling.]~~

154 ~~[(b) "Recreational access" does not include:]~~

155 ~~[(i) hunting, except as provided in Subsection (9)(a)(iii);]~~

156 ~~[(ii) wading without engaging in activity described in Subsection (9)(a); or]~~

157 ~~[(iii) any other activity.]~~

158 Section 4. Section **73-29-201** is repealed and reenacted to read:

159 **Part 2. Access to Public Water**

160 **73-29-201. General access provisions.**

161 (1) A public access water at or below the ordinary high water mark is open to public
 162 use year round for a lawful activity that utilizes the public access water, including:

163 (a) boating;

164 (b) fishing;

165 (c) swimming; or

166 (d) wading.

167 (2) A public water is not open to public use if the public water:

168 (a) is located on private property to which access is restricted; and

169 (b) is not a public access water.

170 Section 5. Section **73-29-202** is repealed and reenacted to read:

171 **73-29-202. Limitation -- Obstructions.**

172 (1) Except as provided in Subsection (2), nothing in this chapter authorizes a member
 173 of the public to enter, cross, or use private property to which access is restricted other than at or
 174 below the high water mark of a public access water.

175 (2) If a manmade or natural obstruction interferes with the use of a public access water,
 176 a member of the public may, along with a watercraft, reasonably portage around the obstruction
 177 staying close to the water and reentering the water immediately upon reaching a safe place to
 178 reenter.

179 Section 6. Section **73-29-203** is repealed and reenacted to read:

180 **73-29-203. Effect of chapter on other uses and restrictions -- Required acts.**

181 (1) A person who uses a public access water is subject to any other restriction lawfully
 182 placed on the use of the public access water by a governmental entity with authority to restrict

183 the use of the public access water.

184 (2) Nothing in this chapter limits or enlarges any right granted by express easement.

185 (3) When leaving a public access water, a person shall remove any refuse or tangible
186 personal property the person brought to the public access water.

187 Section 7. Section 73-29-204 is repealed and reenacted to read:

188 **73-29-204. Fences across public water.**

189 (1) An owner of the bed of a public access water may place a fence or similar barrier
190 across the public access water for an agricultural, livestock, or other lawful purpose.

191 (2) A fence or similar barrier across a public access water shall:

192 (a) comply with an applicable federal, state, or local law; and

193 (b) be constructed in a manner that does not create an unreasonably dangerous
194 condition to the public lawfully using the public access water.

195 (3) An owner described in Subsection (1) who places a fence or similar barrier across a
196 public access water shall allow a member of the public to use a ladder, gate, or other
197 mechanism to portage around or over the fence or similar barrier.

198 Section 8. Section 73-29-205 is repealed and reenacted to read:

199 **73-29-205. Severability.**

200 If a provision of this chapter, or the application of a provision of this chapter, is held to
201 be unconstitutional, the provision is severable and this chapter's other provisions and
202 applications remain effective.

203 **Section 9. Repealer.**

204 This bill repeals:

205 Section 73-29-103, **Declarations.**

206 Section 73-29-206, **Effect of chapter on other uses and restrictions -- Required acts.**

207 Section 73-29-207, **Fences across public water.**

208 Section 73-29-208, **Severability.**

Legislative Review Note
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Office of Legislative Research and General Counsel